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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
06/304-151	09/22/81	KOETRELL	G 801-157

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EXAMINER	
G. Marley	
ART UNIT	PAPER NUMBER
123	3
MAILED	
DATE MAILED: 10/26/82	

This is a communication from the examiner in charge of your application.

COMMISSIONER OF PATENTS AND TRADEMARKS

OCT 26 1982

GROUP 120

This application has been examined

Responsive to communication filed on \_\_\_\_\_

This action is made final.

A shortened statutory period for response to this action is set to expire 1 month(s), 30 days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1.  Notice of References Cited by Examiner, PTO-892
2.  Notice of Informal Patent Drawing, PTO-948
3.  Notice of References Cited by Applicant, PTO-1449
4.  Notice of Informal Patent Application, Form PTO-152

Part II SUMMARY OF ACTION

5.  \_\_\_\_\_

1.  Claims 1-22 are pending in the application.

Of the above, claims \_\_\_\_\_ are withdrawn from consideration.

2.  Claims \_\_\_\_\_ have been cancelled.

3.  Claims \_\_\_\_\_ are allowed.

4.  Claims \_\_\_\_\_ are rejected.

5.  Claims \_\_\_\_\_ are objected to.

6.  Claims 1-22 are subject to restriction or election requirement.

7.  The formal drawings filed on \_\_\_\_\_ are acceptable.

8.  The drawing correction request filed on \_\_\_\_\_ has been  approved.  disapproved.

9.  Acknowledgment is made of the claim for priority under 35 U.S.C. 119. The certified copy has  
 been received.  not been received.  been filed in parent application, serial no. \_\_\_\_\_

filed on \_\_\_\_\_

10.  Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.O. 11, 453 O.G. 213.

11.  Other

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Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-11, drawn to An erythromycin, classified in Class 536, subclass 9.
- II. Claims 12-21, drawn to a methylation process, classified in Class 536, subclass 9.
- III. Claim 22, drawn to a method of controlling bacteria, classified in Class 424, subclass 181.

THE INVENTIONS ARE SEPARATE AND DISTINCT, EACH FROM THE OTHER BECAUSE OF THE FOLLOWING REASONS:

Inventions of group I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown, (1) that the process as claimed can be used to make other and different products or (2) that the product as claimed can be made by another and materially different process. See MPEP 806.05(f). In the instant case the product can be made by a materially different process, such as by cleaving the corresponding N-trifluoroacetyl-11-aza compound followed by reaction with dimethyl sulfate.

Inventions of groups I and III are related as product and process of using. The inventions can be shown to be distinct if either or both of the following can be shown (1) the process for using the product as claimed can be practiced with another materially

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different product or (2) the product as claimed can be used in a materially different process of using. See MPEP 806.05(h). In the instant case the process can be practiced with another materially different product, such as the compounds disclosed in applicants' patent No. 4,328,334.

Because the inventions are distinct for the reasons given above and have acquired separate status in the art restriction for examination purposes as indicated is proper.

Applicant is advised that the response to this action to be complete must include an election of the Invention to be prosecuted even though the requirement be traversed.

Applicant is given 30 DAYS from the date of this letter to make an election to avoid a question of abandonment.

Chan:cvm

A/C 703

557-123 2517

10/20/82

NICKY CHAN  
PRIMARY EXAMINER  
ART UNIT 123

